

ANNEX 2

CONFIDENTIAL

The Democratic Republic of the Congo

[Image of the national flag of the Democratic

Republic of the Congo]

*The Minister of Justice, Keeper of the Seals
and Human Rights*

OBSERVATIONS OF THE AUTHORITIES OF THE DEMOCRATIC REPUBLIC OF THE CONGO ON THE REDUCTION OF SENTENCE OF GERMAIN KATANGA

1. By its note verbale referenced 2015/ER/109/AAB/ebs of 20 August 2015, the Registry of the International Criminal Court requested the observations of the competent authorities of the Democratic Republic of the Congo in respect of the criteria set out under rule 223(a) to (e) of the Rules of Procedure and Evidence, concerning a possible reduction of the sentence passed and imposed on **Germain Katanga**. This request followed the decision of 13 August 2015 of the three judges of the Appeals Chamber appointed for the review concerning reduction of sentence (see ICC-01/04-01/07-3574).
2. Before responding to the Registry's request, we should begin by recalling the procedure concerning the sentenced person, **Germain Katanga**.

3. PROCEDURAL HISTORY

On 7 March 2014, Trial Chamber II found **Germain Katanga** guilty, as an accessory, within the meaning of article 25(3)(d) of the Rome Statute, of one count of crime against humanity (murder) and four counts of war crimes (murder, attack against a civilian population, destruction of property and pillaging) committed on 24 February 2003, during the attack on the village of Bogoro, in Ituri district.

On 23 March 2014, Trial Chamber II, ruling in the majority, **sentenced Germain Katanga to a total of 12 years' imprisonment and ordered that the time spent in detention at the ICC – between 18 September 2007 and 23 May 2014 – be deducted from his sentence. Decisions on potential reparations to be awarded to victims were made later.**

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On 25 June 2014, the Defence for **Germain Katanga** and the Office of the Prosecutor discontinued their appeals against the judgment of the Trial Chamber. As a result, the verdict in this case became final.

Accordingly, the authorities of the Democratic Republic of the Congo have been invited to submit their observations on the possibility provided for by the Rome Statute and envisaged by the Court of granting the convicted person **Germain Katanga** an early release.

4. OBSERVATIONS OF THE AUTHORITIES OF THE DEMOCRATIC REPUBLIC OF THE CONGO

a. Analysis of the legal basis of the request for reduction of sentence:

Sub-paragraphs (a) to (e) of the Rule of Procedure and Evidence set out four criteria that may justify the implementation of such a procedure.

This is the position of the authorities of the Democratic Republic of the Congo on each criterion:

- The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime:

Only the management of the Detention Centre responsible for the sentenced person can attest to this fact.

The authorities of the Democratic Republic of the Congo, for their part, demand that this dissociation be public and unequivocal;

- The prospect of the resocialization and successful resettlement of the sentenced person:

Here also, only the management of the Detention Centre is able to give an informed opinion.

The authorities of the Democratic Republic of the Congo, for their part, emphasise that, in actual fact, the sentenced person's attitude in detention does not always reflect his or her real prospects of resocialisation and resettlement; and that, in many cases, such an attitude can be feigned;

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- Whether the early release of the sentenced person would give rise to significant social instability:

The authorities of the Democratic Republic of the Congo have very serious reservations about this question. The sentencing of **Germain Katanga** to 12 years' imprisonment was poorly received by the people of Ituri, who, in the light of the atrocities committed by Germain Katanga, legitimately expected a much heavier sentence. **Therefore, the early release and return to Ituri of the person concerned, on whatever grounds, would be akin to a real act of defiance that is likely to exacerbate the frustrations of the victims and the communities affected, who so desperately hope for reparations for the serious harm that they have suffered.**

- Any significant action taken by the sentenced person for the benefit of the victims:

In this regard, the authorities of the Democratic Republic of the Congo consider that it is up to **Germain Katanga**, and him alone, to provide evidence of his good faith in this regard. He could do so, for example, by **making it easier for the Registry to identify and locate his assets so that it can implement, as quickly as possible, the reparations process ordered by the Court;**

- Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age:

As far as the authorities of the Democratic Republic of the Congo are concerned, no evidence of any of these factors has been established to date. There is, therefore, no point in bringing them up.

b. Specific considerations:

- The authorities of the DRC harbour legitimate fears about the adverse effects that an early release of a former Ituri warlord (whether it be **Thomas Lubanga, Germain Katanga** or any other individual) could

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have on other proceedings under way before the International Criminal Court (e.g. the **Bosco Ntaganda** case) or before the national Congolese courts (e.g. the case of **Goda Sukpa et al**, better known as the case of the murder of nine MONUC peacekeepers);

- With regard to this last point in particular (the case of **Goda Sukpa et al**), the authorities of the Democratic Republic of the Congo would point out not only that the case has been remanded before the Military High Court but also the fact that, before being surrendered to the Court, **Germain Katanga** and **Thomas Lubanga** were involved in this case; therefore, under the principle of *ne bis in idem* enshrined in the Rome Statute, there is a real possibility that these two individuals will be caught up in the proceedings pending before the Congolese Military High Court.
- Bearing in mind this last possibility, and in the light of the obligation to cooperate which is incumbent on States Parties and which binds them to the International Criminal Court, the authorities of the Democratic Republic of the Congo wish to be consulted by the Court in good time in the event that it designates a host State, other than the Democratic Republic of the Congo, where **Germain Katanga** could serve the rest of his sentence.

5. CONCLUSION

It follows from the above that the authorities of the Democratic Republic of the Congo are strongly opposed to the granting of an early release to the sentenced person, **Germain Katanga**.

Done at Kinshasa, on 23 September 2015

[signed]

Alexis Thambwe-Mwamba